STATE OF TENNESSEE
BOARD OF WATER QUALITY, OIL, AND GAS

IN THE MATTER OF:	)	**DIVISION OF WATER RESOURCES**
	)	**CASE NUMBER DWS23-0190**
	)	
DEPARTMENT OF ENVIRONMENT	)	
AND CONSERVATION,	)	
Petitioner,	)	
	)	
v.	)	
	)	
TOWN OF TELLICO PLAINS	)	**DOCKET NUMBER 04.02-244954J**
TENNESSEE,	)	**JUDGE MARK GARLAND**
	)	
Respondent.	)	

DEPARTMENT'S NOTICE OF APPEAL

The Department of Environment and Conservation ("Department"), by and through the undersigned counsel, in accordance with the Tennessee Rules of Civil Procedure and the Rules of the Tennessee Department of State Administrative Procedures Division (APD), respectfully moves to appeal certain portions of the order entered September 30, 2025 ("Initial Order"), specifically seeking clarification of the administrative judge's ruling.

The Department agrees with the Initial Order's finding that "the Department met its burden of proof on the issue of liability and that the violations at issue [in the Director's Order] occurred." Initial Order, at 17. The Department further agrees with the Initial Order's determination that the Department proved "by a preponderance of the evidence that its civil penalty calculation [in the Director's Order was] appropriate, in compliance with applicable law and policy, and not otherwise arbitrary or capricious." *Id.*

However, the Initial Order later stated that "[b]ecause the Town has already taken remedial action and corrected the violations at issue, the contingent penalty of $18,264 cannot now be

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triggered, is not due, and *shall not be assessed*." Initial Order, p. 18, ¶ 5 (emphasis added). The Initial Order further stated that "assessing the contingent portion of the civil penalty as a pre-determined civil penalty for a future violation runs contrary to the Uniform Policy and denies due process[. . .]" and therefore holds that "the pre-determined civil penalties for future violations set forth in paragraph XVI, sections (3) through (7), of the Director's Order are void and of no effect." Initial Order, p. 18 ¶ 6.

The Department respectfully requests that the Board review and amend the Initial Order to remedy the following two narrow issues:

(1) The Town is responsible for the properly assessed civil penalty of $22,830; and

(2) Paragraph XVI, item (3) of the Director's Order is a valid corrective action that does not offend due process principles. As Item (3) has not yet been completed by Tellico Plains, the associated deferred portion of the total civil penalty ($1,500) could be triggered upon entry of a final order in this case, if Tellico Plains fails to perform the corrective action within 60 days of the entry of the final order.

Respectfully submitted on October 14, 2025.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing has been sent to the following by electronic mail on October 14, 2025.

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